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ORIGINAL

June 6, 1996

EX PARTE

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: Equal Access and Interconnection Obligations Pertaining
to Commercial Mobile Radio Services (CC Docket No. 94-54).

RECEIVED
JUN 6 1996
Federal Communications Commission
Office of Secretary

Dear Mr. Caton:

On Wednesday morning, June 5, 1996, I spoke by telephone with Suzanne Toller, Special Advisor to Commissioner Chong to discuss AirTouch's comments filed in the above-referenced docket and issues relating to this proceeding. The attached material was provided to her. Please associate this material with the above-referenced proceeding.

Two copies of this notice are being submitted to the Secretary in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4955 should you have any questions or require additional information concerning this matter.

Sincerely,

A handwritten signature in cursive script that reads "David A. Gross".

David A. Gross

Attachment

cc: Suzanne Toller

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10/10/96
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ENTERED**STAMP & RETURN**

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

file

In the Matter of

Interconnection and Resale Obligations
Pertaining to Commercial Mobile Radio
Services)
)
) **CC Docket 94-54**
)**RECEIVED****JUL 14 1995**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**REPLY COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.**

AirTouch Communications, Inc. ("AirTouch") hereby submits its Reply Comments in response to issues raised in the above-captioned proceeding ("Second NPRM"). The great majority of commenters, including AirTouch, supported the Commission's tentative conclusions not to impose mandatory CMRS-to-CMRS interconnection or roaming obligations at this time. The arguments raised by these parties were extremely persuasive, and nothing stated by the commenters supporting strict regulatory requirements dictates a departure from the Commission's earlier findings.

These Reply Comments focus on two issues dealing with resale: (1) the reseller switch proposal, and (2) whether there is a need for imposition of a resale obligation on paging and narrowband PCS providers.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
)
Interconnection and Resale Obligations)
Pertaining to)
Commercial Mobile Radio Services)

CC Docket 94-54

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JUN 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Comments of AirTouch Communications, Inc.

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June 14, 1995

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III. No regulation of roaming is warranted.

The Commission should not impose mandatory obligations with regard to roaming capabilities, because the industry, in response to the marketplace, will certainly meet the roaming needs of PCS customers. Roaming is widely available on cellular networks because all carriers understand the value of roaming to their customers. Roaming serves many purposes, such as enabling operators to project a more expansive coverage area than they actually serve. Like interconnection decisions, both parties negotiating a roaming agreement generally stand to benefit by allowing their customers to make calls outside of their home service area.

Seamless roaming on cellular networks is accomplished through voluntary bilateral contracts between carriers, contracts that vary significantly depending upon the carriers involved. These contracts are needed to establish the rates a serving carrier will charge the home carrier to serve roaming customers from another market, the method by which subscriber data will be exchanged, the safeguards required to protect that data from improper use, and liability agreements for fraud and other risks. Both the privacy of customer data and the proprietary nature of the information are thus protected by carriers signing the contracts.

Independent database management companies have been established to serve as clearinghouse vendors for the carriers, providing a means of exchanging and updating

subscriber data, conducting the validation processes, and providing billing settlements among the carriers. These companies establish data links with carriers, obtain complete subscriber data needed to ensure roamers are valid customers, and maintain periodic updates.

Alternatively, carriers are increasingly using national SS7 networks based upon the IS-41 standard. Interconnection to these networks allows carriers to directly query one another's subscriber data, while continuing to use the database companies for billing settlements. Because cellular operators use switching systems from more than half a dozen manufacturers today, these national networks use interfaces to make the translations necessary for carriers to accommodate roamers from incompatible switching systems. Gateways between these national networks enable the exchange of data between carriers participating on different networks. These systems have evolved in response to the market demand for national seamless roaming and are fully able to accommodate new CMRS providers.

No Commission action is necessary to facilitate participation by PCS providers licensed at 1.8 Ghz in roaming on cellular networks. As long as PCS subscribers have dual-mode handsets capable of receiving cellular signals, PCS roaming will become widely available on cellular networks because of the competitive environment. Cellular licensees will have every incentive to negotiate roaming agreements with PCS licensees because the

additional roaming traffic from PCS subscribers on the cellular system will be a valued revenue source.

PCS licensees are also likely to develop separate arrangements among themselves to the degree such roaming agreements are cost effective and convenient to implement. Pacific Bell Mobile Services and Omnitel, for example, announced last month the first agreement between PCS licensees to permit roaming services for customers between their two systems in New York and California, and to collaborate in the development of national PCS standards.¹¹ Omnitel and PBMS service areas collectively cover about 20 percent the total U.S. population. PCS licensees may pursue such agreements as a substitute for PCS-cellular roaming agreements or as a complement to such arrangements.

In order for consumers to be able to roam between technically incompatible CMRS networks, several solutions are possible. Dual-mode handsets are currently available and are expected to proliferate. Such hand-sets will allow consumers to be served by a broader range of networks. Dual-mode and multimode handsets will be able to accommodate analog and digital cellular service, analog cellular and digital PCS service, digital terrestrial CMRS services and mobile satellite services, or several kinds of digital technologies. As the number and diversity of CMRS systems proliferate, the sophistication and capabilities of handsets will vary as well.

¹¹ Phillips Business Information's Mobile Phone News, "Pacific Bell Mobile, Omnipoint Forge PCS Roaming Agreement," (June 5, 1995, at pages 1, 8).

Marketplace incentives also ensure that other technical solutions will be developed within networks to enable subscriber handsets to access noncompatible systems. Network-based solutions would enable consumers to purchase less expensive, single-mode handsets which may facilitate more rapid penetration of PCS. Whether such network-based conversions will be cost effective will depend upon the evolution of PCS and other CMRS networks yet to be built, technology breakthroughs, future generations of digital standards, global mobile satellite systems, and other yet to be determined factors. It is premature to determine whether demand for such capabilities will exist relative to the costs of implementation. The elegance of a fully competitive market is that companies will adapt their services to the needs of their customers rather than be inhibited by inflexible rules based upon out-dated preconceptions about market developments.

In addition to the technological uncertainties of the CMRS market, other considerations support market-driven solutions to roaming issues rather than regulatory requirements. Unnecessary requirements would in fact be detrimental to the market. For example, the significant problem of cellular fraud has required carriers to adjust their roaming agreements to temporarily suspend roaming contracts with some carriers in certain markets. Requiring roaming arrangements to continue in those circumstances would expose carriers to huge losses.¹²

¹² Among other reasons, fraud exposure is increased in roaming situations because (1) carriers cannot generally utilize software that is available for use with local subscribers that can detect unusual calling patterns; (2) it is significantly more difficult for "serving" carriers (*i.e.*, not "home" carriers) to suspend service to individual mobile numbers that are the subject of fraud rather than larger groups of mobile numbers; and (3) there may be delays in subscriber validations with some clearinghouses.

Industry solutions to roaming fraud have evolved as the number of subscribers has grown and methods used to fraudulently obtain service have changed. Cloning fraud, for example, may show a given mobile identification number/electronic serial number as valid for roaming purposes even though a valid customer is not using the service. Among the technological and market solutions under development are the use of Personal Identification Numbers, radio frequency “fingerprints”, smart cards, and fraud pattern detection systems. Roaming agreements between carriers may depend upon the widespread adoption of such technologies or retrofitting of existing systems. Again the market will best achieve the right balance between the financial risks, customers inconvenience, and costs of roaming arrangements.

Diversity among CMRS providers has been encouraged by the Commission and is a hallmark of a competitive market, resulting in greater product differentiation and consumer choice. Just as the Commission chose not to dictate a particular PCS standard in order to allow the market to evolve efficiently, it should not adopt mandatory roaming obligations. Unnecessary regulatory requirements may slow this market evolution with unintended, seriously adverse economic consequences.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of \$
 \$
Interconnection and Resale Obligations \$
Pertaining to \$ CC Docket No. 94-54
Commercial Mobile Radio Services \$

To: The Federal Communications Commission

REPLY COMMENTS OF
SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Respectfully submitted,

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DATED: July 14, 1995

to resolve the issue does not give rise to a claim for damages pursuant to Sections 208 and 209.²² The requirement to interconnect exists "in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest".²³ It would be a violation of fundamental due process and the express wording of Section 201 for a CMRS provider to be found liable for damages for failing to interconnect, prior to the Commission determining that such interconnection is in the public interest.

II. ROAMING ARRANGEMENTS SHOULD BE LEFT TO THE INDUSTRY AND THE MARKET--NOT REGULATORY MANDATES.

The Commission tentatively concluded that there was no need for regulatory management of roaming arrangements and thus refrained from proposing specific regulations for roaming.²⁴ As various parties note, there is an economic advantage to all parties to enter into roaming agreements where technically practical and thus regulatory mandates are not required.²⁵

Roaming in the cellular industry has thrived without government mandates regarding contract terms, price, specific technical interfaces or access to various proprietary databases.²⁶ Further, as CTIA notes, a cursory review of the winning PCS bidders

²²See, 47 USC 208; 47 USC 209.

²³47 USC 201(a).

²⁴Second NPRM, 54, 58.

²⁵New Par Comments, pp. 20-22; GTE Comments, pp. 12-14; PCS PRIMECO Comments, pp. 8-9.

²⁶SBMS Comments, pp. 13-18.

demonstrates that current cellular providers will also be providing PCS services.²⁷ PCIA notes that given the existence of the cellular roaming model upon which to base new roaming agreements, it is likely that expanded CMRS roaming agreements can be quickly consummated and in fact, work has already begun to extend existing roaming agreements to new services.²⁸

A few parties representing PCS interests argue that the Commission should reconsider its decision and regulate roaming arrangements.²⁹ Other parties holding or representing PCS interests, including PCS PRIMECO the winning bidder of 11 MTA licenses in the A/B band auction (\$1.1 billion investment), support the Commission's finding that the record does not warrant adopting rules governing roaming service.³⁰

Pac Bell claims that some hypothetical "consortium of cellular carriers" might create a "blockage" to roaming out of territory and choose not to accommodate roamers from a competing PCS provider. Such speculation ignores the fact that a number of PCS providers are also cellular providers³¹ and the economic incentive to enter into roaming agreements if technologies are

²⁷CTIA Comments, p. 21; See also, New Par Comments, pp. 20-22.

²⁸PCIA Comments, p. 8.

²⁹Pacific Telesis Mobile Services and Pacific Bell Mobile Services (Pac Bell) Comments, pp. 3-7; Comments of American Personal Communications, 7-9.

³⁰PCS PRIMECO Comments, pp. 7-9; SBMS Comments, pp. 13-18; GTE Comments, pp. 12-14; BellSouth, pp. 5-7.

³¹See, CTIA Comments, p. 21; New Par Comments, pp. 20-22.

compatible³². The fact that many cellular providers will also be PCS providers will spur the development of cross service roaming.³³

As Nextel notes, the questions surrounding the feasibility of CMRS roaming are not regulatory questions--they are technical questions.³⁴ Pac Bell, in arguing for a reconsideration and a promulgation of new regulations for roaming, acknowledges that there are difficult technical issues involved but states many "can probably be resolved with sufficient investment".³⁵ CMRS providers should not be forced to make additional "sufficient investments" in their network merely because some other CMRS provider who has chosen an incompatible technology or interface wants to give its customers the ability to roam on the other party's system. Such investment decisions should be left to the CMRS provider and private negotiation between the parties regarding how the cost of achieving compatibility between the systems should be divided, if at all.

III. THE COMMISSION SHOULD NOT REQUIRE THE UNBUNDLING OF WIRELESS NETWORKS.

Various resellers again suggest that the Commission should require CMRS providers to unbundle their wireless network, sell the various elements at cost based rates and allow interconnection between the resellers switch and the CMRS providers

³²New Par Comments, pp. 20-22; GTE Comments, pp. 12-14.

³³See, New Par Comments, pp. 20-22.

³⁴Comments of Nextel, p. 6.

³⁵Pac Bell Comments, p. 6.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Interconnection and Resale Obligations
Pertaining to Commercial Mobile
Radio Services

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CC Docket No. 94-54

To: The Commission

REPLY COMMENTS OF AT&T CORP.

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July 14, 1995

that is proscribed by Section 332, the states and the LECs would interfere directly with congressional and Commission policies. Relegating CMRS service to second-class status with respect to interconnection is also fundamentally inconsistent with the federal policy of helping to "promote investment in the wireless infrastructure by preventing burdensome and unnecessary state regulatory practices that impede our federal mandate for regulatory parity."^{22/} The Commission should therefore preempt state regulation and LEC practices that deny mutual compensation and nondiscriminatory co-carrier interconnection rates to CMRS providers.

II. PCS ROAMING WILL OCCUR WITHOUT COMMISSION INTERVENTION

Most parties support the Commission's decision not to adopt specific standards for roaming, but rather to monitor roaming to ensure that it promotes CMRS competition. As AT&T argued in its initial comments, in the absence of market power, specific roaming rules are not warranted and private negotiations are sufficient.^{23/} Specific roaming standards might also raise technical concerns given the complexities associated with cross-service roaming.^{24/}

Some commenters fear that if the Commission does not mandate specific roaming standards, incumbent CMRS providers will refuse to negotiate fair roaming agreements with new entrants as an exclusionary tactic. For example, without mandatory roaming, Pacific worries that PCS will be an "island" service without the type of ubiquity necessary to

^{22/} Id. at 1421.

^{23/} AT&T at 23; see also CTIA at 19, 21; AMTA at 6; NYNEX at 3, 7; GTE at 13; Rural Cellular Coalition Comments at 4.

^{24/} Nextel at 5.

promote a nationwide wireless infrastructure.^{25/} For similar reasons, APC urges the Commission to treat roaming like a common carrier service subject to nondiscrimination requirements.^{26/}

The PCS providers' concerns are unfounded for several reasons. First, AT&T agrees with CTIA that Section 22.901 of the Commission's rules,^{27/} compels cellular carriers to offer roaming to PCS subscribers with dual-band telephones.^{28/} Moreover, AT&T believes that as long as it is limited to "manual" roaming, Section 22.901 should apply to any subscriber who appears on an AT&T system.^{29/} Any PCS provider who wishes to offer to its subscribers any other type of roaming would be free to negotiate such arrangements with cellular carriers. With mandatory manual roaming, no cellular carrier would be able to exclude a PCS customer from roaming in its territory even if its PCS provider could not

^{25/} Pacific at 5.

^{26/} APC at 8. It is not ironic that APC should urge the Commission to mandate cross-service roaming given the rumor that Sprint will soon divest its cellular holdings. Sprint is one of the major players in the Sprint Telecommunications Venture, which partly owns APC. See Mobile Phone News, "Sprint May Get Out of Cellular Business," No. 25, Vol. 13 (June 19, 1995).

^{27/} 47 C.F.R. § 22.901.

^{28/} CTIA believes that Section 22.901 will foster roaming without imposing undue costs on CMRS providers because PCS subscribers can roam either using a dual-band phone or reprogrammed phones that have a valid cellular system identification number obtained through agreement with the cellular systems. CTIA at 20.

^{29/} "Manual" roaming refers to the least complex type of roaming available. Manual roaming does not incorporate such advanced features as customer verification and fraud prevention.

reach a roaming agreement with the cellular carrier.^{30/} More sophisticated roaming arrangements would still be an option and, given the development of roaming arrangements among cellular carriers, they are likely to develop.

Second, PCS providers need not be concerned that cellular carriers will refuse to reach fair and nondiscriminatory roaming agreements with PCS providers because many PCS providers are also cellular carriers. For instance, AT&T Wireless PCS, Inc., PCS PRIMECO L.P., and the Sprint Telecommunications Venture all have large cellular holdings: AT&T recently merged with McCaw; PCS PRIMECO is a consortium of Bell Atlantic, NYNEX, AirTouch, and U.S. West; and Sprint currently has cellular holdings and is a major player in the Sprint Telecommunications Venture, which also includes Telecommunications, Inc., Cox Communications, and Comcast Corp. These entities have strong market-based incentives to develop sophisticated cross-service roaming capability to provide to their own customers.

Finally, once such cross-service roaming capability exists, cellular carriers will have every incentive to use that capability to develop relationships with unaffiliated PCS providers. PCS providers without cellular holdings will benefit from the developmental efforts of the cellular companies with PCS affiliates because cellular carriers will have the financial inducement to make cross-service roaming available to as many CMRS subscribers as possible. Cross-service roaming is in every CMRS provider's interest. Cellular carriers

^{30/} The Commission should, of course, impose a similar obligation on PCS providers to permit manual roaming by cellular subscribers.

will therefore not deny PCS providers fair roaming arrangements because they would have to forego revenues if they did.

III. NO ADDITIONAL RESALE REQUIREMENTS ARE NECESSARY

As AT&T argued in its initial comments, the Commission need not promulgate specific resale rules for CMRS providers when it could instead rely on the statutory nondiscrimination requirement that all CMRS providers must observe.^{31/} However, if the Commission finds it necessary to impose a resale obligation on some CMRS providers, it should impose the same requirement on all CMRS providers except where it would constrain competition. AT&T also agrees that where resale is not possible -- for example, resale is not technically feasible for providers of air-to-ground service -- the Commission should not implement such a requirement.^{32/} Where resale is technically feasible and competitive, the Commission should ensure that resale requirements for CMRS providers are consistent.

Most parties agree with AT&T that the Commission should limit the obligation of CMRS providers to resell to their facilities-based competitors. However, the parties disagree on whether there should be a sunset period, and, if so, the length of that period.^{33/} AT&T

^{31/} AT&T at 27. All CMRS providers are under the duty not to discriminate unreasonably against similarly situated customers. See 47 U.S.C. § 202(a).

^{32/} See GTE at 17.

^{33/} For instance, AirTouch argues that there should be no requirement to resell to facilities-based competitors at all, but it should be permitted as long as it promotes competition. AirTouch at 16. Southwestern Bell Mobile Systems also believes that there should not be a requirement for facilities-based resale, but that if the Commission does implement such standards, it should be limited to five years. Southwestern Bell at 19. Other parties agree that such a rule should sunset in five years. CTIA at 25; NYNEX at 8; GTE at 22-23; Vanguard at 11; Rural Cellular Coalition at 7. BellSouth would limit the period to three years. BellSouth at 8. BAMS would limit the period to two years. BAMS at 11.

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FILE

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
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Interconnection and Resale)
Obligations Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

To: The Commission

REPLY COMMENTS

ENTERED

BELLSOUTH CORPORATION
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July 14, 1995

In addition, Comcast urges the Commission to adopt the “sender keep-all” approach to LEC-to-CMRS interconnection.³⁸ This proposal should be rejected as beyond the scope of the subject rule making, which only addresses CMRS-to-CMRS interconnection and CMRS resale obligations.³⁹ In any event, the Commission has acknowledged that the LEC-to-cellular interconnection model is working well and there are no pending interconnection complaints.⁴⁰ Accordingly, the Commission should not change current regulations governing such interconnection obligations.

III. Roaming Requirements Should Not Be Adopted

BellSouth concurs with those parties stating that roaming standards and requirements are not necessary at this time.⁴¹ As Bell Atlantic Mobile Systems notes, there is “no evidence of

³⁸ Comcast Comments at 2-4.

³⁹ See *SNPRM* at ¶ 1. Comcast originally proposed this interconnection model in response to the original *Notice of Proposed Rule Making* in this proceeding which dealt with LEC-to-CMRS interconnection. Similarly, APC’s proposal that LEC-CMRS interconnection costs be limited to transport costs only is also beyond the scope of this proceeding. APC Comments at 4.

⁴⁰ See *Eligibility for the Specialized Mobile Radio Services*, GN Docket No. 94-90, *Report and Order*, 77 Rad. Reg. (P&F) 2d 431, ¶¶ 9, 22-24 (Mar. 7, 1995) (“*SMR Order*”); see also *Louisiana Public Service Commission*, PR Docket 94-107, *Report and Order*, FCC 95-191 at ¶¶ 7, 40 (May 19, 1995); *Arizona State Corporate Commission*, PR Docket 94-104, *Report and Order and Order on Reconsideration*, FCC 95-190 at ¶¶ 7, 36, 56 (May 19, 1995); *State of Ohio*, PR Docket 94-109, *Report and Order*, FCC 95-193 at ¶¶ 7, 37-38 (May 19, 1995); *People of the State of California*, PR Docket 94-105, *Report and Order*, FCC 95-195 at ¶¶ 3, 96 (May 19, 1995).

⁴¹ BAMS Comments at 8-9; RCC Comments at 4-6; Ameritech Comments at 5-6; SBMS Comments at 13-18; Frontier Cellular Comments at 5-6; AirTouch Comments at 10-14; NYNEX Comments at 6-8; Alltel Comments at 3; PCS PRIMECO Comments at 9; New Par Comments at 20-22; PCIA Comments at 7-9; AT&T Comments at 23-24; Nextel Comments at 5; AMTA Comments at 6; Frontier Comments at 5-6; Western Wireless (continued...)

refusals to enter into roaming agreements. To the contrary, carriers demonstrate that it is in their economic interest to enter into roaming agreements.”⁴² Furthermore, cellular roaming rates are steadily declining without government intervention. Thus, there is no reason for government regulation of CMRS roaming arrangements.

Adoption of roaming requirements and specifications will hamper the rapid development of CMRS roaming capabilities. Because many commercial mobile radio services are in their nascency, any regulations that are adopted today will soon be outdated and likely will not anticipate future technological breakthroughs. The adoption of mandatory roaming requirements thus may impede the development and deployment of new technologies. The better course would be to refrain from adopting regulations, unless and until the marketplace proves to be ineffective at facilitating CMRS roaming.

Accordingly, BellSouth opposes any proposal that would mandate CMRS-to-CMRS roaming at this time.⁴³ PBMS mentions problem areas that it asserts may develop if CMRS-to-CMRS roaming is not mandated.⁴⁴ There is no evidence, however, that any of these will actually come to pass. In the absence of any evidence that market failure is likely, there is no need for adopting roaming requirements. If it eventually becomes clear that the marketplace cannot

⁴¹ (...continued)
Corporation Comments at 6-7; GTE Comments at 12-14; RCA Comments at 7; CTIA Comments at 19-22.

⁴² BAMS Comments at 8.

⁴³ See PBMS Comments at 3-7.

⁴⁴ Unless roaming is mandated, PBMS claims that PCS providers will only be able to offer “island” service because cellular licensees will block roaming service. See PBMS Comments at 4-7.

facilitate CMRS-to-CMRS roaming, the Commission may initiate a rule making to address the problem. The Commission should rely in the first instance, however, on the marketplace before resorting to government regulation.

Contrary to the assertion of PBMS,⁴⁵ a cellular provider has an economic incentive to enter into a roaming agreement with an out-of-market PCS provider both because the cellular provider is not in direct competition with such a provider and because it will receive additional revenue from such an arrangement. It is unlikely that cellular carriers will fail to enter into roaming arrangements with PCS providers because of a headstart advantage. First, there is no “out-of-market” headstart that cellular providers will preserve. Second, with regard to the in-market headstart that cellular providers may have, a resale requirement (until PCS operations begin) will be sufficient to alleviate any such competitive edge.

BellSouth also disagrees with APC’s assertion that roaming is a common carrier service which is therefore subject to non-discrimination requirements.⁴⁶ Roaming is not a service *per se*. It is merely a billing arrangement provided by cellular carriers to cellular subscribers they are obliged to serve. It is the underlying CMRS service, and not the roaming arrangement, that may be characterized as a common carrier service. Thus, there is no non-discrimination requirement applicable to roaming.⁴⁷

⁴⁵ PBMS Comments at 4-6.

⁴⁶ APC Comments at 7-8.

⁴⁷ Even if roaming were a common carrier “service,” cellular carriers would be permitted to treat customers who are not similarly-situated differently. Cellular subscribers and non-subscribers are not similarly-situated. Thus, a cellular carrier would be entitled, under Section 202(a), to draw reasonable distinctions between them in the provision of roaming service.

The Commission has never indicated that any particular form of roaming must be provided; only that *cellular subscribers, including roamers*, must be able to receive cellular service in any market. Further, the Commission has never prescribed the nature of the rates charged for roaming services. Automatic roaming requires switch programming, developing billing arrangements, and other technical and administrative tasks which vary between carriers. Thus, there may be one price for automatic roaming by a company's own subscribers from another market, another price for automatic roaming by subscribers from an affiliated system, and yet another price for automatic roaming by non-affiliate subscribers. These different subscribers are not similarly situated, due to the differing costs involved in their roaming such as risk of nonpayment, time required for reimbursement, collection costs, and the costs of administering roaming for same-company, affiliate, and non-affiliate customers. Thus, roaming rates are based largely on the relationship of the carriers.

IV. Number Portability Should Be Addressed in Another Proceeding

Some commenters urge the Commission to require number portability between CMRS providers.⁴⁸ This is obviously a highly complex issue and, based on the experience with 800 number portability, local number portability (including CMRS) will be even more complex. BellSouth agrees with CTIA that issues of number portability should be addressed on a broader scale.⁴⁹ Rather than adopt piecemeal regulations governing number portability, the Commission

⁴⁸ NWRA Comments at 17-19; American Tel Group Comments at 1; MobileOne Comments at 1-2.

⁴⁹ CTIA Comments at 25-26; *see* SNet Comments at 18-19.

File

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of

Interconnection and Resale
Obligations Pertaining to
Commercial Mobile Radio Services

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CC Docket 94-54

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

**CELLULAR TELECOMMUNICATIONS
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Its Attorneys

June 14, 1995

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same rationale applies with equal force for all CMRS services as the physical plant is inseverable, and for this reason preemption of contrary state and local regulation would be warranted.⁴⁴

II. THE COMMISSION SHOULD REFRAIN FROM TAKING FURTHER REGULATORY ACTION REGARDING ROAMING SERVICES.

A. Current roaming standards foster competition and efficiency for all CMRS providers.

CTIA concurs with the Commission's tentative conclusion that no regulatory action with respect to roaming services is required at this time.⁴⁵ The same rationale underlying CTIA's objection to compulsory interconnection requirements applies here as well. In the absence of persistent, substantial market power, producers' pursuit of economic efficiency, not government intervention, should determine the need for and extent of CMRS roaming.

The current requirements under Section 22.901 of the Commission's rules,⁴⁶ are sufficiently broad to foster PCS

⁴³(...continued)
has plenary jurisdiction, based upon Section 2(a) and 201 of the Act, over the physical plant used in the interconnection of cellular carriers. Section 201 provides the Commission with express authority over 'physical connections with other carriers.' Cellular physical plant is inseparable and thus Section 2(b) does not limit our jurisdiction in this area").

⁴⁴ For the same reasons, preemption of inseverable, inconsistent state policies with respect to reseller switch proposals would also be warranted. See infra section IV.

⁴⁵ Second Notice at ¶ 56.

⁴⁶ 47 C.F.R. § 22.901. Section 22.901 states, in part, that "[c]ellular system licensees must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing, including roamers, while such subscribers are
(continued...)

roaming services without imposing undue costs upon the CMRS industry. Cellular carriers will serve PCS subscribers under current rules assuming the requisite connections and contractual arrangements between carriers are in place.⁴⁷ Service will occur in either of two ways. First, a PCS subscriber using a dual-band phone will appear on a cellular system as a cellular customer when the dual-mode PCS phone switches to its cellular mode. Thus, the cellular service rules would apply, requiring cellular carriers to provide service to roamer customers. Second, in the unlikely event that a cellular carrier would attempt to deny roaming service to a PCS subscriber using a dual-band phone, nothing would prevent the PCS carrier from programming the dual-band phone with a valid cellular system I.D.,⁴⁸ and then the cellular system would be unable to distinguish whether it was providing service to a PCS subscriber or a cellular subscriber, thereby allaying potential discrimination concerns.

⁴⁶(...continued)

located within any portion of the authorized cellular geographic service area . . . where facilities have been constructed and service to subscribers has commenced."

⁴⁷ The Second Notice contains the Commission's recitation of industry representations regarding Section 22.901's applicability to PCS subscriber roaming in cellular service areas. See Second Notice at ¶ 57. Upon examination of the Commission's recitation, it appears that clarification is necessary.

⁴⁸ A PCS provider could obtain valid cellular system I.D.s either from a cellular market licensed to the PCS licensee, or by resale agreement.